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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,204	01/07/2004	Laura M.L. Chan	CA920030031US1	5645
58139	7590	05/11/2009		
IBM CORP. (WSM) c/o WINSTEAD SECHREST & MINICK P.C. P.O. BOX 50784 DALLAS, TX 75201				
EXAMINER				
AHMED, AFFAF				
ART UNIT		PAPER NUMBER		
3622				
MAIL DATE		DELIVERY MODE		
05/11/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/753,204  
Filing Date: January 07, 2004  
Appellant(s): CHAN ET AL.

\_\_\_\_\_  
Robert A. Voigt, Jr.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 02/17/2009 appealing from the Office action mailed 09/30/2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

**NEW GROUND(S) OF REJECTION**

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 16 and 36 are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, a 35 U.S.C § 101 process must (1) be tied to a particular machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S.

584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the particular machine to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps are not tied to a particular machine and do not perform a transformation. Thus, the claims are non-statutory.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. *Note the Board of Patent Appeals Informative Opinion Ex part Lange Myer et al.* [http://iplaw.bna.com/iplw/5000/split\\_display.adp?](http://iplaw.bna.com/iplw/5000/split_display.adp?)

#### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

#### **(8) Evidence Relied Upon**

2002/0016025	Smith et al	1-2002
7,113,971 B2	Jacobi et al	9-2006

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**NEW GROUND(S) OF REJECTION**

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-18 and 19-20 are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, a 35 U.S.C. § 101 process must (1) be tied to a particular machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In *re* Bilski et al, 88 USPQ 2d 1385 CAFC (2008); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the particular machine to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps are not tied to a particular machine and do not perform a transformation. Thus, the claims are non-statutory.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. *Note the Board of Patent Appeals Informative Opinion Ex part Lange Myer et al.*  
[http://iplaw.bna.com/iplw/5000/split\\_display.adp?](http://iplaw.bna.com/iplw/5000/split_display.adp?)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 13, and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobi et al, US Pat 7,113,917 in view of Smith et al, US Pub No: 2002/0010625 A1.

**Claim 13:**

**Jacobi discloses:**

- *defining a personalized web page comprising one or more links to initial product exploration the links being based on personalization information for the user (see at least column 4, lines 31-44, column 6, lines 43-67, column 15, lines 59-67 and column 16, lines 1-5, column 7, lines 34-39 and fig 5 and 6 with the associated text);*
- *each initial product exploration web page comprising an entry point to a set of exploration web pages defined according to product exploration metaphor technology and the set of said exploration web pages being defined with reference to personalization information for the user or each initial guided search web page comprising an entry point to a set of guided search web pages defined according to guided search technology and the set of said guided search web pages being defined with reference to personalization information for the user (see at least column 3, lines 13-34 and column 7, lines 61-67);*
- *providing the defined web pages to the user for display in response to requests from the user (see at least column 7, lines 11-20 and lines 34-39);*

Jacobi does not specifically disclose:

- *wherein said exploration web pages permit a customer to reach pages of interest by identifying product attribute ;*

However, Smith in at least paragraph 47 discloses electronic commerce that include functionality for allowing users to search, browse, and make purchases from an online catalog of purchasable items or products. The various product offerings are arranged within a browse tree in which each node represents a category or subcategory of product. Smith also discloses in at least paragraph 48 discloses a detail page that predominantly contains information about a particular product or other items. Each product detail page typically includes a description, picture, and price of the product, lists of related products and information about the product's availability. The detail page of product is accessed by the user by selecting a link associated with the product or by submitting a search query that uniquely identifies the product. Furthermore Smith in at least paragraph 21, discloses a resulting list of recommended items (product) presented to the user during browsing session on a customized page. From this page, the user can deselect the viewed items and initiate the generation of a refined list of recommended items.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Jacobi's personalized recommendations of items presented within a database with Smith's content personalization during a current browsing session with the motivation of providing consumers with options to refine their products need.

**Examiner notes** that Applicant stated that *"defining a personalized web page comprising one or more links to initial product exploration or guided search web pages"*.

It has been held that Language that suggest or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation (MPEP §2106 II C).

**Claims 14-17:**

Jacobi discloses the limitations as shown above.

With regard to the limitations of:

- *the personalization information for the user comprises a set of item attributes defined by a personalization system.*
- *each initial product exploration web page comprises a link to a result page.*
- *the result page comprises a result list.*
- *the result list comprises an item attribute table in which attributes of a set of items are grouped to permit comparison by a user.*

Smith in at least paragraph 202 discloses a list of recommended items known to be of interest to the user, each hyperlink within the list is generated by reading the user's session record or recently viewed items and or/ recently used search query. Smith also discloses in at least paragraphs 172-173 shopping cart recommendations services and generating a set of shopping cart recommendations, based on the same theme or characteristics defined by the user. Smith also disclose in at least paragraph 193 a personalized webpage that can be generated dynamically by the session recommendations component. The page includes a list of recommended items and a list of the recently viewed items. Each item includes a hyperlink to the corresponding detail, allowing the user to return to previously viewed detail pages.

Further more, Smith in at least paragraphs 203-204 and fig 12 a detail page for an MP3 player that may include a list of others MP3 players and /or any other electronics products that the user has recently viewed and/or searched. Thus when a user views a product detail page of an item in a particular product category, the detail page is supplemented with a list of (or a link to a list) other products that falls within the same product category, which allows users to more easily perform a comparison shop.

It would have been obvious to one of ordinary skill in the art at the time of the invention that Smith ability to display a result page of a product attributes (characteristics) with a link to detail pages, which allows users to more easily compare products is equivalent in functionality to Applicant invention of displaying a product attributes tables in which attributes of the items are grouped to permit comparison by the a user.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Jacobi's personalized recommendations of items presented within a database with Smith's content personalization during a current browsing session with the motivation of providing consumers with a variety of personalized options to choose from when exploring web-pages to view and/ or purchase products.

**Claim 18:**

Jacobi discloses the limitations as shown above.

Jacobi does not specifically disclose, but Smith, however discloses:

- *the set of guided search web pages comprises web pages corresponding to a subset of potential guided search nodes in a guided search tree, the subset being defined with reference to the personalization information for the user;*

Smith in at least paragraph 47 discloses an online catalog of purchasable items or products. The various products offering are arranged within a browse tree in which each node represents a category of subcategory of products. Smith in at least paragraph 48 discloses a detail page that predominantly contains information about a particular product or other items. Each product detail page typically includes a description, picture, and price of the product, lists of related products and information about the product's availability. The detail page of product is accessed by the user by selecting a link associated with the product or by submitting a search query that uniquely identifies the product.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Jacobi's personalized recommendations of items presented within a database with Smith's content personalization during a current browsing session with the motivation of providing consumers with hierarchal tree that is used to guide consumers and can be systematically searched.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al US Pub No: 2002/0010625 A1.

As per **claim 19**, Smith teaches:

- *generating a web page comprising a set of links based on personalization information from said user and receiving a selection of one of said set of links (see at least paragraphs 192, 193 and fig 11 with the associated text);*
- *generating an exploration web page based on said selected one of said set of links, wherein said exploration web page comprises a set of product attributes based on personalization information from said user; and receiving a selection of one or more product attributes from said set of product attributes that are of interest to said user (see at least paragraphs 48, 206 and fig 12 with the associated text).*

As per **claim 20**, Smith teaches:

- *receiving an indication from said user to show products (see at least paragraph 61);*

- *generating a results web page in response to receiving said indication from said user to show products, wherein said results web page comprises a product list having information and one or more links to product web pages for products that meet a criteria based on said selection of one or more product attributes* (at least paragraphs 47, 48, 206 and fig 12 with the associated text).

**(10) Response to Arguments:**

A. With regard to claim 13, Appellant's arguments are persuaded with regard to claim rejection under 112, second paragraph. Therefore, the 112 second paragraph rejection is withdrawn.

B. Claims 19 and 20, Appellant argues that the claims are not properly rejected under 35 U.S.C. 102 (b) as being anticipated by Smith.

**1.**

Appellant argues that there is no language in Smith that discloses generating an exploration webpage based on the selected one of the set of links, where the exploration webpage comprises a set of product attributes based on personalization information from the user and receiving a selection of one or more product attribute.

Examiner respectfully disagrees. Smith in at least paragraph 48 discloses a product detail webpage that can be obtained by accessing the product webpage. The product detail webpage includes description, picture and the price of the product (*product attributes*) and other information about the product and lists of related products. Smith also discloses in accessing the detail page of a product, a user must either select a link associated with that product or submit a search query that uniquely identifying the product (*personalized webpage*). Thus, access by a user to a product's detail page

represents an affirmative requests by the user for information about that product.

Smith also in at least paragraphs 201-203 and fig 11 with the associated text discloses customized webpage (*personalized webpage*) from which a user can select a specific category of product to search or view. Each category of product includes a hyper-textual list of recently viewed items and more specifically detail pages that were visited. Each hyperlink within the list is to a product page visited during the current browsing session.

2.

Appellant argues that claim 20 recites the combination of features of independent claim 19, and hence claim 20 is not anticipated by Smith for at least the above-stated reasons that claim 19 is not anticipated by Smith.

Examiner respectfully disagrees. The Examiner has clearly articulated how Smith anticipates the limitation of claim 19, as shown above in the response, to the Appellant's arguments regarding the rejection of claim 19.

3.

Appellant argues that Smith does not teach or disclose generating a results webpage in response to receiving an indication from the user to show products, where the results webpage comprises a product list having information and one or more links to product webpage for products that meet a criteria based on the selection of one or more product attributes. There was no selection of product attributes that were of interest to the user.

Examiner respectfully disagrees. Smith in at least paragraph 48 discloses a product detail webpage that can be obtained by accessing the product webpage. The product detail webpage includes description, picture and the price of the product (product attributes) and other information about the product and lists of related products. Smith also discloses that in order to access the detail page of a product, a user must either select a link associated with that product or submit a search query that uniquely identifying the

**product. Thus, access by a user to a product's detail page represents an affirmative request by the user for information about that product.**

**Smith also in at least paragraphs 201-203 and fig 11 with the associated text discloses customized webpage from which a user can select a specific category of product to search or view. Each category of product includes a hyper-textual list of recently viewed items and more specifically detail pages that were visited. Each hyperlink within the list is to a product page visited during the current browsing session.**

C. Claims 13-18 are not properly rejected under U.S.C. 103 (a) as being unpatentable over Jacobi in view of Smith.

**1. a.**

**Appellant argues that Jacobi does not teach guided search web pages that permit the customer to create pages of interest by prompting customers for answers about characteristics and preferences of the customer.**

**Examiner respectfully disagrees. Since the claim recites optional language. The Examiner has addressed the step of *defining a personalized webpage comprising one or more links to initial product exploration, wherein said exploration web pages permit a customer to reach pages of interest by identifying product attribute.***

**Appellant further argues that Smith does not teach or disclose permitting the customer to identify product attributes.**

**Examiner respectfully disagrees. Smith in at least paragraph 58 discloses a user can create a shopping cart for buying children's books. Smith also in at least paragraph 168 discloses the user can select a specific category such as "non-fiction" or "romance" from the drop down menu to request category -specific recommendations.**

**b.**

Appellant argues that claim 13 does not include optional language and that the personalized webpage step must be performed in connection with the phrase “defining a personalized web page to include links to either the initial product exploration or the guided search webpage.

Examiner respectfully disagrees. Claim 13 does include optional language. Claim 13 recites defining a personalized web page to include links to *either* the initial product exploration *or* the guided search webpage, as Appellant indicated. Examiner has addressed and rejected *defining a personalized web page comprising one or more links to initial product exploration, wherein said exploration webpage permit a customer to reach pages of interest by identifying product attributes.*

c.

Appellant argues that claims 14-18 are patentable over Jacobi in view of Smith for the at least the reasons that claim 13 is patentable over Jacobi in view of Smith.

Examiner respectfully disagrees. The Examiner has clearly articulated how claims 14-18 are unpatentable over Jacobi in view of Smith with regard to the limitation of claim 13, as shown above in the response, to the Appellant's arguments regarding the rejection of claim 13.

d.

Appellant argues that Smith does not teach a set of guided search web pages that permit the customer to reach pages of interest by prompting the customer for answers about characteristics and preferences of the customer.

Examiner respectfully disagrees. Claim 18 recites the limitation of the set of the guided search webpage comprises webpage corresponding to a subset of potential guided search nodes in a guided tree, the subset being defined with reference to the personalization information for the user. There is no language of a set of guided search web pages that permit the customer to reach pages of

**interest by prompting the customer for answers about characteristics and preferences of the customer.**

Appellant further argues **that Smith does not teach or suggest a set of guided search webpage that comprises *webpage corresponding to a subset of potential guided search nodes in a guided tree, the subset being defined with reference to the personalization information for the user.***

Examiner respectfully disagrees. Smith in at least paragraph 47 discloses an online catalog of purchasable products, where the various product offering are arranged within a browse tree in which each node represents a category or subcategory of product. Smith also in at least paragraph 48 discloses a user must either select a link associated with a specific product or submit a search query uniquely identifying the product in order to access a product detail page. Smith Also in at least paragraph 191 and fig 10 with the associated text discloses records of the detail page, where the first record represents a detail page and its corresponding list of products. The second record represents a browse node page and its corresponding list of products, which may include all the products that are displayed on the browse node pager a subset of these products (e.g., the top selling or most frequently viewed products).

e.

Appellant argues **that claim 18 does not include optional language.**

The Examiner is unclear what Appellant is referring to here, since the Examiner did not point out that claim 18 recites any optional language.

2.

Appellant argues **that there is no rational in why one skilled in the art would modify Jacobi with Smith's to have an exploration web page to permit a customer to reach pages of interest by identifying product attributes.**

Examiner respectfully disagrees. Jacobi discloses an e-commerce web site that allows the uses to search, browse and make purchases from online catalog

**and recommends products to the users (personalize products for the users) based on purchase history of the users and users' profiles.**

**Smith discloses a content personalization based actions performed in real-time based on recently conducted searches by the user.**

**Smith also discloses a method of supplementing product details pages within online catalog of products. The method comprises processing product viewing history to identify for each first product, a set of additional products that are deemed to be related to the first product. The set of additional products is incorporated into a product detail page of the first product to assist users in locating related products**

**It would have been obvious to one of ordinary skill in the art at the time of the invention to include in the personalized recommendations system of Jacobi the ability to provide user with a real-time based searched detail pages within the online catalog products since the claimed invention is merely a combination of old elements, and in the combination each element would have been performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the result (providing consumers with options to refine their products need) of the combination were predictable.**

**3.**

**Appellant argues that there is no rational in why one skilled in the art would modify Jacobi with Smith to include a set of item attributes defined by a personalization system? and to have initial product exploration webpage comprise a link to a result page, where the result comprise a result list which comprises an item attribute in which attributes of a set of items are grouped to permit comparison by a user?**

**Examiner respectfully disagrees. Jacobi discloses an e-commerce web site that allows the uses to search, browse and make purchases from online catalog**

and recommends products to the users (personalize products for the users) based on purchase history of the users and users' profiles. Jacobi also discloses recommending different items that correspond to the same work, such as the hardcover and paperback versions of a given book or the VCR cassette and DVD version of a given video.

Smith discloses a content personalization based actions performed in real-time based on recently conducted searches by the user.

Smith also discloses a detail page for an MP3 player that may include a list of others MP3 players and /or any other electronics products that the user has recently viewed and/or searched. Thus when a user views a product detail page of an item in a particular product category, the detail page is supplemented with a list of (or a link to a list) other products that falls within the same product category, which allows users to more easily perform a comparison shop.

It would have been obvious to one of ordinary skill in the art at the time of the invention to include in the personalized recommendations system of Jacobi the ability to provide user with a real-time comparison based searched detail pages within the online catalog products since the claimed invention is merely a combination of old elements, and in the combination each element would have been performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the result (providing consumers with a variety of personalized options to choose from when exploring web-page to view and /or purchase products) of the combination were predictable.

4.

Appellant argues that there is no rational in why one skilled in the art would modify Jacobi with Smith to include WebPages corresponding to a subset of

**potential guided search nodes in a guided search tree, the subset of being defined with reference to the personalization information for the user.**

Examiner respectfully disagrees. **Jacobi discloses generation of similar items lists, and the similar items lists are stored in a tree table structure for efficient look-up. Jacobi also discloses a method for recommending items to users from a database by storing a selected subset of the plurality of data values in a mapping structure that maps items to related items.**

**Smith discloses an online catalog of purchasable products, where the various product offering are arranged within a browse tree in which each node represents a category or subcategory of product currently. Smith also discloses real-time presentation of records of the detail page, where the first record represents a detail page and its corresponding list of products. The second record represents a browse node page and its corresponding list of products, which may include all the products that are displayed on the browse node page or a subset of these products (e.g., the top selling or most frequently viewed products).**

**It would have been obvious to one of ordinary skill in the art at the time of the invention to include in the personalized recommendations system of Jacobi the ability to provide user with a real-time comparison based searched detail pages within the online catalog products since the claimed invention is merely a combination of old elements, and in the combination each element would have been performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the result (providing consumers with hierarchal tree that is used to guide consumers and can be systematically searched, when exploring web-page to view and /or purchase products) of the combination were predictable.**

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

**(1) Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

**(2) Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent

applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Afaf Ahmed/  
Examiner, Art Unit 3622  
04/20/2009

/Yehdega Retta/  
Primary Examiner, Art Unit 3622

Conferees:

Eric Stamber /E. W. S./  
Supervisory Patent Examiner, Art Unit 3622

Yehdega Retta /Y. R./  
Primary Examiner, Art Unit 3622

**A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:**

/Wynn W. Coggins/

Director, TC 3600